IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 7 OF 2005.

Smt. Amishi Milan Honawar.]
age 39 years, Indian inhabitant of]
Mumbai, Occ. Airhostess, Air India,]
residing at Flat No.B-13, Jessika,]
1st floor, Dr. N.R. Karode Marg,]
Borivali (West), Mumbai - 400 002.] .. Appellant
(Ori.Respdt. to
Counter Claim)

Vs

Shri Milin Bhavanishankar Honawar,]
age 40 years, occ. service, Indian]
inhabitant of Bombay, residing at]
Flat No.A-3, Padam Building, Ground]
floor, Dr. N.R. Karode Marg,]
Borivali (West), Mumbai - 400 092.] .. Respondent
(Ori.Petitioner
to Counter claim

Shri Omparkash Pandey i/b M/s. Pandey & Co. for the appellant.

Shri N.V. Gangal for the respondent.

CORAM: R.M.S. KHANDEPARKAR &
ANOOP V. MOHTA, JJ.

DATED: 14TH JUNE, 2005

ORAL ORDER. : [Per R.M.S. Khandeparkar, J.]

1. Heard the Advocates for the parties. The learned Advocate for the respondent has sought to raise preliminary objection as regards maintainability of the

Appeal under Section 19 of the Family Courts' Act, 1984 (hereinafter called "the said Act") on the ground that the impugned order is an interlocutory order.

2. Few facts, relevant for the decision revealed from the record, are that the marriage between the parties to the proceedings was sought to be dissolved by way of divorce under the provisions of the Hindu Marriage Act, 1955 by filing a divorce petition by the appellant on 24th July, 2000. The proceedings were sought to be contested by the respondent while filing counter claim seeking divorce on the ground of cruelty. The appellant thereupon sought to withdraw her Petition for divorce while the counter claim filed by the respondent continued. During the pendency of the proceedings, the respondent took out a Petition seeking relief against the appellant to restrain her from preventing the respondent and other members of his family in having access, use and utilisation of flat No.B-13, situated at first floor, Jessica Building, Dr.N.R. Karode Marg, Borivali West, Mumbai (hereinafter called as "the suit flat"). The said Petition was contested by the appellant. However, the Family Court, by the impugned order dated 4th October 2004, allowed the said application and directed the appellant not to prevent the ingress and egress i.e. entry of the

members of the respondent's family and to allow the respondent's family to enter, occupy, use and utilise the suit flat. While it was the contention of the respondent that the suit flat was purchased by the mother of the respondent and, therefore, it belonged to her and consequently he and his family members are entitled for the use thereof. While, it is the case of the appellant that the suit flat was purchased out of her money and, therefore, the respondent and his family members cannot claim ingress and egress to the said flat as a matter of right.

3. The preliminary objection sought to be raised on behalf of the respondent to the present Appeal is to the effect that the impugned order having been passed during the pendency of the proceedings for divorce pending before the Family Court and as it does not determine the rights of the parties to the suit flat finally, it is an interlocutory order within the meaning of the said expression under Section 19 of the said Act and, therefore, no Appeal lies under the said provision of law. Reliance is sought to be placed in the decision of the Full Bench of the Orissa High Court in **Swarna Prava Tripathy & Anr. Vs. Dibyasingha Tripathy**, reported in AIR 1998, Orissa, 173, and of this Court in **Sunil Hansraj Gupta Vs. Payal Gupta**, reported in 1991,

Mh.L.J., 737. The learned Advocate for the appellant, on the other hand, has submitted that the impugned order cannot be said to be an interlocutory order as it determines the application finally during the pendency of the proceedings. An order, which disposes even the miscellaneous proceedings during the pendency of the main suit or proceedings, cannot be termed as interlocutory order. In any case, according to the learned Advocate for the appellant, the impugned order gives finality to the issue which was sought to be raised in the said application, at least during the pendency and till the disposal of the proceedings for divorce and, therefore, it cannot be termed as an interlocutory order within the meaning of the expression under Section 19 of the said Act.

4. In accordance with Section 19 of the said Act, an Appeal lies from every judgment or order, not being an interlocutory order of a Family Court to the High Court, both on facts and on law. Sub-section (5) of Section 19 provides that "except as aforesaid, no appeal or revision shall lie in any Court from any judgment or order or decree of a Family Court". Sub-section (4) of Section 19 relates to the revisional power of the High Court against the orders passed by the Family Court. However, even the revisional powers cannot be exercised

in relation to the interlocutory order as there is a specific bar provided in that regard under sub-section (4) of Section 19. In other words, any interlocutory order passed by the Family Court is neither appealable or revisable. The point which arises is as to what is the meaning of the term "interlocutory order" under Section 19. Undisputedly, the said term has not been defined under the said Act.

5. It is to be noted that the jurisdiction of the Family Court is not restricted merely to the matrimonial matters, but it extends even to the property matters of the parties to such matrimonial disputes before the Family Court. Indeed, under Section 7(1) of the said Act, Explanation Clause (c) and (d), the Family Court is empowered to deal with the suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them as well as suit or proceeding for an order of injunction in circumstances arising out of a marital relationship. Section 10 of the said Act deals with the procedure which is to be followed by the Family Courts and sub-section (1) thereof provides that subject to other provisions of the said Act and the rules, the provisions of the Code of Civil Procedure, 1908, and of any other law for the time being in force shall apply to the suits and proceedings

other than the proceedings under Chapter IX of the Code of Civil Procedure, 1973 before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court.

6. As already stated above, the said Act nowhere defines the term "interlocutory order". However, the said term had been the subject matter of number of decisions from time to time and it is worth referring to two such decisions of the Apex Court, one in **Madhu Limaye's Vs. State of Maharashtra**, reported in AIR 1978, S.C., 47 and another in **B.C. Shukla Vs. State**, reported in AIR 2000, S.C., 964, which were also referred to in the decision relied upon by the Advocate for the respondent i.e. in Sunil Hansraj's case (supra).

7. In Madhu Limaye's case (supra) the Court observed that: "Ordinarily and generally, the expression 'interlocutory order' has been understood and taken to mean as a converse to the term 'final order'." It was further held that an order which does not deal with the final rights of the parties, but either (1) is made before judgment and gives no final decision on the matters in dispute, but is merely on a matter of

procedure, or (2) is made after judgment and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals.

8. In B.C. Shukla's case (supra), it was clearly ruled that:

> "Thus summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decide the rights of the parties is only an interlocutory order. In other words, in ordinary sense, of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial, but which does not, however, conclude the trial at all."

9. After taking stock of the Supreme Court decisions on the subject of interlocutory order, the Division Bench of this Court in Sunil Hansraj's case (supra) has held that:

> "Upon review of various decisions of the Supreme Court we may sum up that the

> essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought, but not a final decision or judgment in the matter in issue."

Undoubtedly, the decision in Sunil Hansraj's case (supra) was in relation to the order regarding interim maintenance. It was clearly laid down in the said decision that such order being interlocutory, the appeal was not maintainable under Section 19(1) of the said Act.

10. The judgment of the Full Bench of the Orissa High Court in Swarna Prava Tripathy's case (supra) was also in relation to order of interim maintenance. However, while dealing with the point relating to the meaning of the expression "interlocutory order" under Section 19 of the Family Courts Act, it was was held thus:

> "Interlocutory orders are of various kinds; ;some like orders of stay, injunction, or receiver, are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the Court usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by

subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not impinge upon the legal rights of the parties to the litigation, the principle of res judicata does not apply to the findings on which these orders are based, though if application were made for relief on the same basis after the same has once been disposed of, the Court would be justified in rejecting the same basis after the same has once been disposed of, the Court would be justified in rejecting the same basis after the same has once been disposed of, the Court would be justified in rejecting the same as an abuse of the process of Court. An order may be final for one purpose and interlocutory for another. The expression 'interlocutory order' as used in restricted and not in any broad or artistic sense, denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties, in Webster's Third International Dictionary, the expression 'interlocutory' has been defined as, 'not final or definite, made or done during the progress of an action; intermediate, provisional'. The emphasis is, therefore, at the stage when the order is passed. Interlocutor stage is decidedly the state between the cognisance taken by the Court and the judgment pronounced. The interlocutory order is supplemental proceeding which is a means to an end and not an end itself. The word 'interlocutory' means according to the import of the dictionary 'intermediate' and the interlocutory order is one passed during the progress of the proceeding that is to say, interlocutory order must be an order passed after the initiation of the proceedings and before the final order disposing of the matter."

11. The above rulings unequivocally lay down the

law that the expression ‘interlocutory order’ used in the said provision of law refers to the orders passed during the pendency of the main proceedings and which relate to any dispute which is sought to be resolved or put to rest, temporarily and pending the disposal of the main proceedings. An order which cannot have existence or an order which do not subsist on conclusion of the main proceedings, unless it is specifically protected while disposing the main proceedings, will, for all purposes, be an interlocutory order within the meaning of the said expression under the said provision of law. Being so, any order which is passed during the pendency of the proceedings which does not amount to a final decision on any point relating to the rights of the parties and which has been passed either to maintain status quo or to facilitate the disposal of the main proceedings or for the purpose of the progress of the main proceedings, either in relation to the marital relationship or other disputes which can be dealt with by the Family Court in terms of the provisions of the said Act, would be an interlocutory order and, therefore, no appeal would lie under Section 19(1) against such order. Whether such an order can be assailed by way of a Petition under Article 227 of the Constitution of India or not is a totally different question with which we are not concerned in this appeal.

12. It is also to be noted that it is well settled law that right to appeal depends upon the statutory provisions in that regard. There is no inherent right to the litigant to file an appeal against an order passed by the Court or authority having original jurisdiction, unless the statute dealing with the procedure relating to the matter in controversy or the proceedings before such Court or authority, specifically provides for an appeal against the order passed by such Court or authority. Besides, the right to appeal can always be restricted or regularised by the statutory provisions. Once Section 19(1) of the said Act specifically provides that an appeal would lie against every judgment and order of the Family Court except interlocutory order and when sub-section (5) of Section 19 specifically bars appeal against any order other than the order which is made appealable under sub-section (1) of Section 19, the intention of the legislature is made very clear that the orders which have no finality are not to be subjected to an appeal under the said Act.

13. Reverting to the facts of the case in hand, undisputedly the impugned order has been passed on an application filed by the respondent in the proceedings for divorce pending before the Family Court. It is

needless to say that the impugned order has been passed during the pendency of the proceedings and cannot have existence or enforceability after the disposal of the main proceedings, unless it is specifically protected by the Family Court at the time of the disposal of the main proceedings. Being so, the impugned order is an interlocutory order and, therefore, is not appealable under Section 19(1).

14. For the reasons stated above, therefore, the objection raised by the respondent is well-founded and needs to be upheld, and is accordingly upheld.

15. Hence the Appeal is dismissed in limini as being not maintainable, with no order as to costs.

[R.M.S. KHANDEPARKAR, J.]

[ANOOP V. MOHTA, J.]

[srpasha@hc]